

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>WILLIAM McWHORTER</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 195,795; 195,796;
<b>TRIAD MANUFACTURING</b>	)	196,577; 206,848; & 247,416
Respondent	)	
AND	)	
	)	
<b>ROYAL &amp; SUN ALLIANCE INSURANCE CO. and</b>	)	
<b>FIREMAN'S FUND INSURANCE COMPANY</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent and one of its insurance carriers, Royal & SunAlliance Insurance Company (Royal), appeal from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on March 13, 2000.

**ISSUES**

The issue on appeal is the date of accident or, stated another way, whether claimant's current need for preliminary hearing benefits is a natural and direct consequence of an injury claimant suffered while working for respondent during Royal's period of coverage or whether, instead, claimant thereafter suffered a new accident and injury during the period that insurance coverage was with a subsequent insurance carrier. The second injury would also have been while working for respondent.

Claimant, respondent and Fireman's Fund Insurance Company argue this appeal fails to raise an issue which the Board has jurisdiction to review on an appeal from a preliminary hearing order and should, therefore, be dismissed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the issues raised on appeal are not jurisdictional issues. As a consequence, the Board does not have jurisdiction to review those issues at this stage of the proceedings.

The Brief of Respondent and Insurance Carrier (Royal) in Support of Application for Review summarizes the case as follows:

In general, this case involves a series of injuries and aggravations to the claimant's right shoulder while working for Triad Manufacturing. The claimant's Application for Hearing alleges injury from May 27, 1999 [sic] through August 20, 1999. During the relevant period of time, Triad Manufacturing was insured by three separate insurance carriers. From the initial date of the original injury of May 27, 1995 through June 14, 1997, Royal & SunAlliance Insurance Company had coverage for Triad Manufacturing. From June 15, 1997 through November 1, 1997, Travelers Insurance Company had coverage for Triad Manufacturing, and thereafter, Fireman's Fund Insurance Company had coverage for Triad. The claimant has continued to work for the respondent during the coverage periods of all three insurance carriers during which time he continued to subject his shoulder to repetitive use and trauma. The claimant missed no work as a result of his right shoulder condition since May 27, 1995. Judge Moore found that the first carrier, Royal & SunAlliance Insurance Company, was liable for the continued treatment of the claimant. It is from that decision that this appeal is taken.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the Administrative Law Judge exceeded his/her jurisdiction. K.S.A. 1999 Supp. 44-551. This includes review of issues identified in K.S.A. 1999 Supp. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for medical treatment and temporary total disability compensation is the result of an injury that arose out of and in the course of his employment with respondent. The only questions are date or dates of accident, whether claimant suffered one accident or two, and, as a result, which insurance carrier is liable for benefits. Royal contends the Administrative Law Judge erred when he found a single accident and a date of accident during its period of coverage. This contention does not raise one of the issues identified in K.S.A. 1999 Supp. 44-534a and does not otherwise constitute an allegation that the Administrative Law Judge exceeded his jurisdiction.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on March 13, 2000, should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2000.

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BOARD MEMBER

c: Scott M. Price, Salina, KS  
Clifford K. Stubbs, Lenexa, KS

**WILLIAM McWHORTER**

**3**

**DOCKET NOS. 195,795; 195,796;  
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Richard A. Boeckman, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director